

## **REMARKS**

Reconsideration of the application is respectfully requested in view of the following remarks.

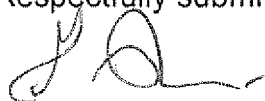
The Office asserts in the Advisory Action that Applicants' molecular weight limitation "is a result effective variable which, in the absence of unexpected results, can be accorded no patentable weight." Section 2144.05, IIB, of the MPEP defines "result-effective variable" as "a variable which achieves a recognized result...." For instance, Section 2144.05 IIB provides the example of a waste water treatment device having a specified tank volume to contractor area ratio. That section indicates that since the prior art did not recognize that treatment capacity is a function of the tank volume to contractor area ratio the parameter was not recognized in the art to be a result that effective variable. It would be appreciated if the Office would point out specifically which teaching of the prior art the Office is using concerning use of the molecular weight limitation as a result effective variable. The result effective variable taught in '824 appears to be the "relationship" taught in Col. 9 of '824. Yet, the Office does not show how that relationship leads to the claimed invention. It is submitted that it is improper to use Applicants' disclosure in determining that a something is a "result effective variable."

The Office also fails to show why Applicants' calculations provided earlier (declaration by Lloyd Wix) failed to demonstrate that Cole et al. do not teach the present invention.

Cole '154 is cited as making obvious in Cole '824 the inclusion of at least 98% of mono-di- and oligosaccharides. In view of the relationship taught by the primary reference and the Office's inability to establish that such leads to Applicants' invention, the Office has not established how Cole '154 could lead to Applicants' invention. Indeed, Cole

'154 suffers from loss of overrun upon extrusion (col. 4, lines 60-65) (see page 3 of the present application) and it is therefore not apparent why Cole '284 would turn to Cole '154 for an extrudable soft ice cream.

Respectfully submitted,



---

Gerard J. McGowan, Jr.  
Registration No. 29,412  
Attorney for Applicant(s)

GJM/pod  
(201) 894-2297